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Supreme Court U.S.
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No. 01-1090

In The

Supreme Court of the United States

ROBERT F. CARLSON AND JOHN MORACK,

Petitioners,

v.

UNITED ACADEMICS – AAUP/AFT, AFL-CIO,

Respondent.

On Petition For Writ Of *Certiorari*
To The United States Court Of Appeals
For The Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

WILLIAM K. JERMAIN
Counsel of Record
JERMAIN DUNNAGAN & OWENS
3000 A Street, Suite 300
Anchorage, Alaska 99503
(907) 563-8844

Attorneys for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

248

TABLE OF CONTENTS

Page

STATEMENT OF THE FACTS 1

REASONS FOR DENYING THE WRIT 3

I. THE DENIAL OF CLASS CERTIFICATION SHOULD BE AFFIRMED 4

A. The denial of class certification was not an abuse of discretion 4

B. Petitioners failed to meet the criteria for class certification 5

C. The Petitioners' claims were not typical of the class they sought to represent 6

D. Petitioners could not fairly and adequately represent the interest of the putative class 7

E. Corrections to the *Hudson* Notice Effectively Apply to All Faculty 11

II. THE ISSUE OF UNITED ACADEMICS' NOTICE, AFTER IT CORRECTED ANY DEFICIENCIES, WAS CORRECTLY TREATED AS MOOT 12

A. The violation has ceased and subsequent events have "completely and irrevocably eradicated the effects of the alleged violation" 13

III. THE DECEMBER NOTICE PROVIDED BY THE UNION DOES *NOT VIOLATE THE REQUIREMENTS OF HUDSON* 16

A. United Academics did not discriminate between challengers and objectors 16

B. The threat of imposing an increased fee is not unconstitutional 17

CONCLUSION 19

TABLE OF AUTHORITIES

Page

Adarand Constructors, Inc. v. Slater, 528 U.S. 216 (2000) 12

Amchem Products, Inc. v. Windsor, 521 U.S. 591 (1997) 5

Barber v. Hawaii, 42 F.3d 1185 (9th Cir. 1994) 5

Brotherhood of Ry. and S.S. Clerks v. Allen, 373 U.S. 113 (1963) 8

Chicago Teachers Union, Local No. 1. v. Hudson, 475 U.S. 292 (1986) 2

County of Los Angeles v. Davis, 440 U.S. 625 (1979) 13

Davis v. Comed, 619 F.2d 588 (6th Cir. 1980) 11

East Texas Motor Freight System, Inc. v. Rodriguez, 431 U.S. 395 (1977) 8

Ford v. United Bhd. of Carpenters, 323 F. Supp. 1136 (D. Pa. 1970) 8

Friends of the Earth, Inc. v. Laidlaw Environmental Serv., Inc., 528 U.S. 167 (2000) 13

Gilpin v. American Federation of State, County and Mun. Employees, 875 F.2d 1310 (7th Cir. 1989), *cert. denied*, 493 U.S. 917 (1989) 10, 12

Grunwald v. San Bernardino City Unified School Dist., 994 F.2d 1370 (9th Cir. 1993).....17, 18

Kidwell v. Transportation Communications Int'l Union, 946 F.2d 283 (4th Cir. 1991)..... 7

Knight v. Kenai Peninsula Borough School Dist., 131 F.3d 807 (9th Cir. 1997).....2, 18

TABLE OF AUTHORITIES – Continued

Page

Leer v. Washington Education Ass'n, 172 F.R.D. 439 (D.Wash. 1997) 10

Lehnert v. Ferris Faculty Ass'n, 500 U.S. 507 (1981) 9

Mayfield v. Dalton, 109 F.3d 1423 (9th Cir. 1997) 5

Mitchell v. Los Angeles Unified School Dist., 963 F.2d 258 (9th Cir. 1992) 8, 9

Nelsen v. King County, 895 F.2d 1248 (9th Cir. 1990) 5

New Left Educ. Project v. Board of Regents, 414 U.S. 807 (1973) 14

Philips v. Klassen, 502 F.2d 362 (D.C. Cir. 1974), *cert. denied*, 419 U.S. 996 (1974) 11

Pilots Against Illegal Dues v. Air Line Pilots Ass'n, 938 F.2d 1123 (10th Cir. 1991) 8

Railway Clerks v. Allen, 373 U.S. 113 (1963) 17

Reich v. Occupational Safety, 102 F.3d 1200 (11th Cir. 1997) 13

SEC v. Medical Committee for Human Rights, 404 U.S. 403 (1972) 13

Siles v. ILGWU National Retirement Fund, 783 F.2d 923 (9th Cir. 1986) 4

Six Mexican Workers v. Arizona Citrus Growers, 904 F.2d 1301 (9th Cir. 1990) 5

Steffel v. Thompson, 415 U.S. 452 (1974) 13

United Independent Flight Officers v. United Airlines, 756 F.2d 1274 (7th Cir. 1985) 11

TABLE OF AUTHORITIES – Continued

Page

United States v. W.T. Grant Co., 345 U.S. 629 (1953) 12

Weaver v. University of Cincinnati, 970 F.2d 1523 (6th Cir. 1992) 7, 12

STATUTES AND RULES:

A.S. 23.40.110 1

Sup. Ct. R. 10 4

F.R.Civ.P. 23(a) 5, 6

F.R.Civ.P. 23(b) 5

RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF THE FACTS

Respondent, United Academics ("Union"), is the certified exclusive bargaining representative for faculty employed by the University of Alaska ("University"). Respondent was certified in 1996 by the Alaska Labor Relations Agency under the State's Public Employment Relations Act ("PERA"). Pet. App. J at 83a and App. K at 84a. Petitioners, Carlson and Morack, are employees of the University of Alaska at Fairbanks. Pet. App. A at 2a.

As required by A.S. 23.40.110, and as set forth in the collective bargaining agreement between the University and United Academics, Petitioners are part of a bargaining unit comprised of all regular, non-adjunct, teaching and research professors at the University. Alaska's PERA authorizes payment of an agency fee as a condition of employment. Pet. App. L at 85a. Pursuant to that statutory provision, United Academics and the University negotiated language in the collective bargaining agreement that permits the deduction of dues or agency fees from employee wages. The collective bargaining agreement requires all research and teaching faculty in the bargaining unit to either maintain membership in United Academics or, for those faculty members who have chosen to refrain from membership in the Union, to pay mandatory "agency fees" as a condition of continued employment. Pet. App. A at 2a. United Academics' Treasurer sent a memorandum in late March 1998 to all faculty informing them of this contractual obligation. In April 1998, a follow-up letter was sent to those professors

who had failed to respond. *Id.* at 2a-3a. Petitioners then filed this lawsuit. *Id.* at 3a.

During the suit, United Academics sent further notices to the faculty regarding payment of these agency fees. On October 12, 1998, United Academics distributed a new notice and demand which provided that, "[a]gency fees pursuant to the requirements of the United States Supreme Court decision, *Hudson v. Chicago Teachers Union*[1] will be initiated on November 15, 1998. Any agency fees collected prior to November 15, 1998 will be reimbursed to individual faculty members." Pet. App. C at 30a.

In a Motion for Summary Judgment, Carlson and Morack outlined what they alleged were constitutional deficiencies in the notice and procedures. *Id.* at 28a-29a. Later, United Academics sent a second post-filing letter dated December 1, 1998, and enclosed documents that were "inadvertently omitted from the material accompanying" the earlier *Hudson* notice. Pet. App. D at 43a.

In addition to making certain that it was complying with the notice requirements under *Hudson*, United Academics placed all agency fees received from non-member

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[1] The United States Supreme Court in *Chicago Teachers Union, Local No. 1. v. Hudson*, 475 U.S. 292, 310 (1986) sets out specific minimum procedural obligations for unions to follow when seeking agency fees from members: "[1] an adequate explanation of the basis for the fee; [2] a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision-maker[;] and [3] an escrow for the amounts reasonably in dispute while such challenges are pending." *Knight v. Kenai Peninsula Borough School Dist.*, 131 F.3d 807, 810 (9th Cir. 1997).

bargaining unit employees into an escrow account. Pet. App. A at 12a. Furthermore, United Academics informed the University that no further agency fee deduction collected by the University were to be distributed to United Academics until the *Hudson* requirements were fulfilled. Pet. App. C at 37a. United Academics also retained a Seattle accounting firm to conduct an audit of its records for fiscal year 1997 (11/1/96-10/31/97) to determine properly apportioned chargeable and non-chargeable expenses. Pet. App. D at 48a-50a. United Academics further contacted the American Arbitration Association about using its services to provide impartial arbitrators to promptly hear and resolve any chargeable fee disputes. Pet. App. A at 5a, 8a-9a.

REASONS FOR DENYING THE WRIT

The three questions presented by the Petitioners are, first, whether class certification should be denied; second, whether the challenges to the United Academics' October notice should be treated as moot; and, third, whether the notice provided by the Union violated *Hudson* because the notice distinguishes between objectors and challengers and allows the Union to seek an increased fee from non-members challenging its calculation. The Ninth Circuit's conclusion that United Academics' subsequent notices complied with the requirements of *Hudson* was proper. The Ninth Circuit appropriately concluded that although the burden of demonstrating mootness is heavy, the Union fully met its burden on the record. Finally, the Ninth Circuit correctly found that class certification would serve no purpose.

"Review on a writ of certiorari is not a matter of right, but of judicial discretion." Sup. Ct. R. 10. "A petition for a writ of certiorari will be granted only for compelling reasons." *Id.* Petitioners have not presented any compelling reason for this Court to exercise its discretionary jurisdiction over this appeal. In an effort to grab this Court's attention, Petitioners argue that this is a case involving important questions of constitutional violations. This is, however, a routine mootness question and not a matter worthy of the Court's valuable time. Petitioners fail to identify any circuit split on an important federal issue, or any other reason to justify this Court's review of the disposition of their claim.

The Ninth Circuit's ruling was proper in all respects and Respondents respectfully urge this Honorable Court to deny the Petition for Writ of Certiorari.

I. THE DENIAL OF CLASS CERTIFICATION SHOULD BE AFFIRMED.

The Petitioners assert that class certification would serve a purpose by awarding absent class members declaratory and injunctive relief, as well as nominal damages. The Petitioners' position is illusory. No class was ever certified. Thus, there are no absent class members.

A. The denial of class certification was not an abuse of discretion.

A district court's denial of class certification will not be overturned unless the district court abused its discretion. *Siles v. ILGWU National Retirement Fund*, 783 F.2d

923, 926 (9th Cir. 1986); *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997); *Barber v. Hawaii*, 42 F.3d 1185, 1197 (9th Cir. 1994); *Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1304 (9th Cir. 1990); *Nelsen v. King County*, 895 F.2d 1248, 1249 (9th Cir. 1990). "A court abuses its discretion if it applies impermissible legal criteria." *Barber*, 42 F.3d at 1197. The Petitioners have presented no evidence to support the position that the district court abused its discretion in denying class certification. Instead, the Petitioners try to bootstrap class certification to their mootness argument. The Petitioners assert that as far as they can tell, no court has ever declared absent class members' claims for relief moot. The Petitioners repeatedly refer to these absent class members. However, the district court found that the plaintiff had failed to meet the requirement of F.R.Civ.P. 23a. Petitioners have failed entirely to meet their burden by demonstrating how the court's denial was an abuse of discretion.

B. Petitioners failed to meet the criteria for class certification.

The criteria that must be met for class certification is recited within F.R.Civ.P. 23. As the party seeking class certification, the Petitioners bore the burden of demonstrating that each of the requirements of Civil Rule 23(a), and at least one of the requirements of Civil Rule 23(b) were met. *Mayfield v. Dalton*, 109 F.3d 1423, 1427 (9th Cir. 1997). The district court found that Petitioners satisfied the numerosity and commonality requirements which comprise two of the four-part test. However, the district

court ruled class certification was inappropriate because the Petitioners failed to meet the remaining two parts of the test under Rule 23(a). The court found that the claims of the Petitioners were potentially in conflict with those of the proposed class and that the Petitioners could not adequately represent the class based on these conflicts.

The Petitioners could have gathered further information and conducted additional discovery or moved for class certification again. In the district court's order denying class certification, the court addressed the current status of the case and found that no justification for recognizing a class action existed *at this time*. *Id.* at 27a (emphasis added). The Petitioners were not foreclosed from submitting additional evidence to the court and seeking to certify the class at a later date, but Petitioners chose not to do so.

C. The Petitioners' claims were not typical of the class they sought to represent.

United Academics distributed two memoranda. The first informed all unit faculty who were not members of United Academics of the requirement that each pay an agency fee to offset the legitimate expenses of the labor organization in matters of collective bargaining, contract administration, and grievance representation. Pet. App. C at 30a. The second memorandum informed the Petitioners that if they failed to arrange for the automatic deduction of an agency fee by a set date, not only would they have to pay retroactive agency fees, but they would face the prospect of involuntary termination, or a collection action. *Id.*

After receiving the memoranda, some faculty authorized the deduction of an agency fee from their salaries. The Petitioners, however, did not respond at all. Pet. App. B at 19a. The Petitioners paid no dues to United Academics, nor did they authorize the deduction of agency fees from their wages consistent with the collective bargaining agreement. Pet. App. C at 36a n.3. Except for a small group of faculty, Carlson and Morack differ significantly from all other persons who were sent the notice. Thus, the district court correctly found that Carlson and Morack were not typical of the class they proposed to represent.

D. Petitioners could not fairly and adequately represent the interest of the putative class.

Carlson and Morack sought to represent agency fee payers who, while abstaining from Union membership, had no quarrel at all with United Academics and its affiliates and had never challenged the Union's calculations of chargeability. The class representative must "possess the same interest and suffer the same injury" as the class members.[2] Courts have proceeded cautiously when

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[2] Courts have upheld the denial of certification of a class based upon similar allegations. *See Weaver v. University of Cincinnati*, 970 F.2d 1523, 1530 (6th Cir. 1992) (court held that certification of a class was not appropriate in part because the plaintiffs sought punitive damages and restitution of all agency fees received by the union and thus, "their choice of remedy is arguably antagonistic to the wishes of other employees."); *see also Kidwell v. Transportation Communications Int'l Union*, 946 F.2d 283, 305-06 (4th Cir. 1991) (National Right to Work Foundation was not an adequate litigation representative for those

addressing requests for class certifications in cases involving labor unions. The reasoning behind such cautiousness arises from the fact that unions represent a diverse constituency whose interests may diverge or vary based on context and circumstance. *See, e.g., East Texas Motor Freight System, Inc. v. Rodriguez*, 431 U.S. 395, 405 (1977) (overruling class certification in part because of membership vote indicating conflict with plaintiff's position); *Ford v. United Bhd. of Carpenters*, 323 F. Supp. 1136, 1140 (D. Pa. 1970) (class certification denied where membership was sharply divided). The Petitioners' proposed class was extremely broad and included many employees whose interests were very diverse. The Petitioners failed to nominate a reasonably defined class.

In *Mitchell v. Los Angeles Unified School Dist.*, 963 F.2d 258 (9th Cir. 1992), the Ninth Circuit interpreted *Brotherhood of Ry. and S.S. Clerks v. Allen*, 373 U.S. 113, 119 (1963), in which this Court stated:

> [n]o respondent who does not in the course of further proceedings in this case prove that he objects to such use [of agency fees by the union for non-representation purposes] will be entitled to relief. This is not and cannot be a class action.

The Ninth Circuit, in *Mitchell*, interpreted and applied this principle as follows:

"nonunion employees who, while not wanting their fair share (and perhaps even wanting to pay less) than their 'fair share' fees, have no desire to ruin the union and impair its ability to represent them effectively. . . ."); *Pilots Against Illegal Dues v. Air Line Pilots Ass'n*, 938 F.2d 1123, 1133-34 (10th Cir. 1991) (conflict existed where "one of the plaintiffs sent out a misleading letter to potential class members.").

> The meaning of this statement is clear . . . employees who fail to object individually in the amount of the compulsory union dues have no right to receive relief from the payment of those dues. *Accord Seay v. McDonnell Douglas Corp.*, 427 F.2d 996, 1004 (9th Cir. 1970) [on remand in action against union under the RLA, district court should include as plaintiffs only those employees who raised objection to the use of agency fees for political purposes].

963 F.2d at 260.

The Petitioners unreasonably persist in their argument that nonmembers who have never objected to payroll deductions, or to the principle that they should pay a fair share fee to support the Union's representation costs, or to calculations of chargeability made by the United Academics and its affiliates, should be part of the class that Carlson and Morack sought to have certified. The Petitioners' position is contrary to the failure to object principle set forth in *Mitchell v. Los Angeles Unified School District, supra*, as well as in *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507, 520 (1981) (objecting employees not charged for activities that were unrelated to their collective bargaining agreement).

The district court, in its order denying Carlson and Morack's motion for class certification, discussed the distinctions between "free riders" and those individuals who are "hostile to the union." Pet. App. B at 26a. The court noted that, "Plaintiffs in this action seek injunctive relief, declaratory relief, equitable restitution, nominal

damages and punitive damages," and concluded that "Plaintiffs' demand for equitable restitution and punitive damages gives rise to precisely the sort of conflict of interest anticipated in *Gilpin* and assiduously avoided in *Leer*."[3] *Id.*

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[3] In *Gilpin v. American Federation of State, County and Mun. Employees*, 875 F.2d 1310 (7th Cir. 1989), *cert. denied*, 493 U.S. 917 (1989), Judge Posner discussed the conflict:

> A potentially serious conflict of interest within the class precluded the named plaintiffs from representing the entire class adequately. Two distinct types of employees will decline to join the union representing their bargaining unit. The first is the employee who is hostile to unions on political or ideological grounds. The second is the employee who is happy to be represented by a union but won't pay any more for that representation than he is forced to. The two types have potentially divergent aims. The first wants to weaken, and if possible destroy the unions; the second, a free rider, wants merely to shift as much of the cost of representation as possible to other workers, i.e., union members.

Id. at 1313. Citing the National Right to Work Foundation's efforts to obtain the complete and total restitution of all agency fees paid by nonmembers to the union as part of its remedy, the district court observed that this request for relief created a significant disparity in the goals of the named petitioners and those of the putative class, and denied class certification. In *Leer v. Washington Education Ass'n*, 172 F.R.D. 439 (D.Wash. 1997), the court approved certification of a class of all agency fee payers upon its finding that the nonunion litigants sought only "injunctive and declaratory relief on their notice claim," and the total damages were limited to compensatory and nominal damages plus interest). *Id.* at 445-46. In *Leer*, the relief sought by the plaintiffs and their National Right to Work Legal Foundation counsel was narrow relief, and not, as here full "restitution".

The district court determined the remedy sought by the Petitioners was arguably antagonistic to the wishes of other employees.[4] The relief sought by the Petitioners of complete restitution of all fees collected (Pet. App. B at 17a), as well as "punitive damages" for the constitutional tort they claimed they suffered, are the types of remedies that create an obvious conflict between the interests of the Petitioners, such as Carlson and Morack, and other faculty members who do not share the same goals.

E. Corrections to the *Hudson* Notice Effectively Apply to All Faculty.

Any changes or corrections made by the Union to the *Hudson* notice apply not only to the Petitioners, but to all other faculty members. There is not a shred of evidence offered by the Petitioners that United Academics has deviated from its revised notice that fully complies with the standard set out in *Hudson*. Indeed, as the record in this case clearly shows, if the Union had done anything contrary or in violation of *Hudson*, the Petitioners would have pursued it. As discussed earlier, the Seventh Circuit

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[4] *See Philips v. Klassen*, 502 F.2d 362, 365-68 (D.C. Cir. 1974), *cert. denied*, 419 U.S. 996 (1974) (plaintiffs who challenged an early retirement program were not allowed to represent a class of employees "that [i]n all likelihood" included employees who were satisfied with the program); *United Independent Flight Officers v. United Airlines*, 756 F.2d 1274, 1284 (7th Cir. 1985) (denying class certification because some members opposed benefit changes for which plaintiffs sued; plaintiffs were members of organization antagonistic to union); *Davis v. Comed*, 619 F.2d 588, 595 (6th Cir. 1980) (lack of support by potential class members relevant to certification).

in *Gilpin* found that there was little or no legitimate need for a class action because "[t]he union's policy is to refund any overcharges determined by the arbitrator to all non-union members, whether or not they are parties to a judicial or arbitrable proceeding . . . " 875 F.2d at 1313. Similarly, the court in *Weaver* noted that certification of the class was not crucial because once the plaintiff had secured any relief, it would inure to the benefit of all the members of the proposed class anyway. *Weaver v. University of Cincinnati*, 970 F.2d 1523, 1531 (6th Cir. 1992). Like *Gilpin* and *Weaver*, the change in United Academics' *Hudson* notice has benefited all members.

The trial court enjoys considerable latitude in approving or denying class certification. The district court's decision finding that the Petitioners did not meet the typicality and adequacy of representation elements was not an abuse discretion.

II. THE ISSUE OF UNITED ACADEMICS' NOTICE, AFTER IT CORRECTED ANY DEFICIENCIES, WAS CORRECTLY TREATED AS MOOT.

In *United States v. W.T. Grant Co.*, 345 U.S. 629 (1953), this Court held that the resignation of an individual from serving on the boards of several competing companies did not moot the case. Thus, the voluntary cessation of the board member's disputed service was not enough to moot the action. The Ninth Circuit has recognized that as a general rule "[v]oluntary cessation of challenged conduct moots a case . . . only if it is *'absolutely* clear that the allegedly wrongful behavior could not reasonably be expected to recur.' " *Adarand Constructors, Inc. v. Slater,*

528 U.S. 216, 222 (2000) (quoting *United States v. Concentrated Phosphate Export Ass'n*, 393 U.S. 199, 203 (1968)); *see also Friends of the Earth, Inc. v. Laidlaw Environmental Serv., Inc.*, 528 U.S. 167 (2000).

In *County of Los Angeles v. Davis*, 440 U.S. 625 (1979), however, this Court articulated a two-pronged test for mootness. A case may become moot if (1) the alleged violation has ceased, and there is no reasonable expectation that it will recur, and (2) interim relief or events have "completely and irrevocably eradicated the effects of the alleged violation." *Id.* at 631; *see also Reich v. Occupational Safety*, 102 F.3d 1200 (11th Cir. 1997). The doctrine of mootness requires that an actual controversy must be in existence at all stages of review, not merely at the time the complaint was filed. *Steffel v. Thompson*, 415 U.S. 452, 459 n.10 (1974); *SEC v. Medical Committee for Human Rights*, 404 U.S. 403, 407 (1972).

A. The violation has ceased and subsequent events have "completely and irrevocably eradicated the effects of the alleged violation."

There is no reasonable expectation that United Academics would repeat the conduct challenged in this action. United Academics conceded that its notice was inadequate before its December mailing. United Academics admitted that its procedure was insufficient and incomplete and took prompt, affirmative steps to promptly change its practice. The Union corrected its notice and the lower courts found that the "December mailing cured any deficiency." Pet. App. E at 75a-78a. Moreover subsequent events – the mailing of later notices

and the correction of what the court found were errors – have eliminated the effects of the violation and complied with the obligations set forth in *Hudson*.

Despite this wealth of evidence in the record, the Petitioners argue that United Academics will remain "free to return to its old ways." Pet. at 12. However, as the district court provided, and the Ninth Circuit affirmed:

> It is clear that United Academics cannot collect an agency fee from either Plaintiff until after proper notice is given. Plaintiffs have not been threatened with termination by United Academics or the University, and public employers such as the University are forbidden from terminating any faculty member for nonpayment of agency fees until the demanding union confirms to the employer's satisfaction that it has complied with the requirements of *Hudson*.[5]

Pet. App. C at 37a. As the district court ruled, United Academics has clear incentive to continue to provide proper notice.

The Ninth Circuit sustained the district court ruling and found that it did "not believe United Academics would now attempt to revert to the deficient notice format and subject itself to future litigation that it would clearly lose." Pet. App. A at 15a. The Ninth Circuit found that "the conceded defect was cured, and therefore

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[5] *See also New Left Educ. Project v. Board of Regents*, 414 U.S. 807 (1973) (remanding case to the district court with instructions to dismiss the case as moot when the defendant had complied with declaratory and injunctive relief ordered by the district court).

mooted, by the Union's actions . . . ." 265 F.3d at 787. The Ninth Circuit opined:

> [W]hen the district court considered and ruled on Appellant's renewed motion for summary judgment, the Union had conceded many months prior that the October notice was inadequate and had distributed the omitted material to all objectors in an attempt to comply with *Hudson*. Thus, the procedure as presented to the District court included both the admittedly deficient October demand and the amended December demand.
>
> It is unreasonable to think that the Union would resort to conduct that it had admitted in writing was constitutionally deficient and had attempted to correct over fourteen months prior to the district court's disposition of Appellants' challenge. In fact, the Union was attempting to comply with the *Hudson* standards several months before the district court filed its first order in which the court reviewed United Academics' initial demands and concluded they were constitutionally inadequate.

Id. at 786-87.

The challenged conduct has stopped and is highly unlikely to reoccur. In its final judgment, the district court denied the plaintiffs' request for a permanent injunction finding that "it appears that the parties are now in virtual agreement regarding the form of notices to be sent in the future to comply with *Hudson*." Pet. App. D. The district court found that the subsequent notices provided by United Academics cured any earlier defects by providing adequate notice. Pet. App. E at 75a-78a. United Academics meets the two-prong test for mootness.

III. THE DECEMBER NOTICE PROVIDED BY THE UNION DOES *NOT VIOLATE THE REQUIREMENTS OF HUDSON.*

A. United Academics did not discriminate between challengers and objectors.

The Petitioners argue that the December notice violates *Hudson* because the notice discriminates between objectors and challengers, and allows the Union to seek an increased fee from nonmembers challenging its calculation.

Relying on *Hudson* in its decision, the Ninth Circuit stated:

> "It is well-settled that a nonunion member can be forced to share in the expenses incurred by a union in its role as the exclusive bargaining representative on behalf of employees." *See Hudson*, 475 U.S. at 301. "However, a union cannot, without infringing upon First Amendment rights, force nonmembers to pay for expenses related to political and ideological activities unrelated to the union's duties as bargaining representative. *See id.* at 302."

Pet. App. A at 7a.

Contrary to the Petitioners' suggestion, there is nothing in the Notice that amounts to a demand by United Academics upon agency fee payers that they remit the same amount as full member dues. In fact, the agency fee payer, regardless of his/her objector status, would contribute no more than $626.40, a 13% reduction in full member dues. Pet. App. D at 50a.

Because of this distinction in the amount assessed between members and nonmembers, a Class I Objector would only pay the agency fee and would be entitled to any return of nonchargeable amounts determined at a later time. *Id.* at 50a-51a. By contrast, the Class II Objector would not only pay the agency fee, but would be entitled to a prompt resolution of his/her objection before an impartial arbitrator and placement of the entire amount of the agency fee paid in an escrow account pending the arbitrator's decision. *Id.* at 51a. Should the Class II objector prevail, s/he would be entitled to the monetary value of any correction by the arbitrator.

There is no constitutional deficiency here. The procedure distinguishing between Class I and Class II objectors gives faculty two options, and those who elect the second option have the entirety of their agency fee placed into escrow pending the conclusion of the arbitration procedure. *See Grunwald v. San Bernardino City Unified School Dist.*, 994 F.2d 1370, 1374 (9th Cir. 1993) (upholding full escrow pending determination of charges). The procedure adopted by United Academics is consistent with constitutional requirements.

B. The threat of imposing an increased fee is not unconstitutional.

"Absolute precision in the agency fee calculation is not required." *Hudson*, 475 U.S. at 306; *Railway Clerks v. Allen*, 373 U.S. 113, 122 (1963). It is possible that the amount of nonchargeable expenses may increase by virtue of an arbitrator's finding that the original determination was incorrect. The true inquiry is the actual costs of

the chargeable amounts claimed by the union to be part of the agency fee, and whether the mathematical determination is supported by documentation. *Knight*, 131 F.3d at 813. Thus, the only possible way an increase could occur is if the calculations were in error.

The Notice provides that anyone entering the system agrees that "the arbitrator may either approve the United Academics' . . . calculations and increase or decrease the amount . . . attributable to 'non-chargeable' activities." Pet. App. D at 56a. That portion of the Notice which states that agency fees might be increased for those who object and proceed to arbitration is not clearly unconstitutional.

Simple mathematical miscalculations that lead to an upward adjustment in chargeable expenses do not reflect an unconstitutional effort to penalize objectors who wish to have the fee determination scrutinized before either an independent arbitrator or a court. In *Grunwald v. San Bernardino City Unified School District*, 994 F.2d 1370 (9th Cir. 1993), *cert. denied*, 510 U.S. 964 (1993), the Ninth Circuit noted that disputed amounts placed in escrow and bearing interest to reflect loss of the use of the money, resulted in an actual savings of $ .80. Although the amount was too small to be of practical significance, the court determined that "what matters is that the procedure adopted gives the objecting employee the benefit of any imprecision in the calculation process." *Id.* at 1374 n.3. Thus, the court recognized that the audit process was not expected to be perfect, nor the amounts withheld to be exact. Arbitral scrutiny could result in an adjusted figure, upward or downward. The district court correctly found that the ability of the impartial arbitrator to

increase the fee was not unconstitutional if there was a mathematical error in the calculation.

After considering the relevant facts and the applicable law, the Ninth Circuit properly rejected the Petitioners' challenge to the two-class objection system. Further the Ninth Circuit correctly found that adjustments in the chargeability amount, if in error, do not violate *Hudson*. The panel ruled, purely and simply, that the conceded defect in the Union's *Hudson* notice was cured and therefore mooted by the Union's action. This case raises no significant issue of law that warrants this Court's review.

CONCLUSION

For all of the foregoing reasons, Respondent respectfully requests that this Honorable Court deny the Petition.

Respectfully submitted,

WILLIAM K. JERMAIN
Counsel of Record
JERMAIN DUNNAGAN & OWENS
3000 A Street, Suite 300
Anchorage, Alaska 99503
(907) 563-8844

Attorneys for Respondent